

ENVIRONMENTAL REGULATION

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

OFFICE OF POLLUTION PREVENTION AND RIGHT TO KNOW

Worker and Community Right to Know Regulations

Proposed Readoption with Amendments N.J.A.C. 7:1G

Authorized by: Bradley M. Campbell, Commissioner
Department of Environmental Protection.

Authority:

N.J.S.A. 13:1B-3

N.J.S.A. 13:1D-9

N.J.S.A. 13:1D-125 et seq.

N.J.S.A. 26:2C-1 et seq.

N.J.S.A. 34:5A-1 et seq.

N.J.S.A. 52:27D-222-228

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 11-04-06/60

Proposal Number: 2004-273

A public hearing on this proposal will be held on:

Friday, September 10, 2004, 9am to close of comments

New Jersey Department of Environmental Protection

Public Hearing Room, 1st Floor

401 East State Street

Trenton, NJ 08625

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket #11-04-06/60

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, NJ 08625

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at

<http://www.state.nj.us/dep>.

The agency proposal follows:

SUMMARY

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department of Environmental Protection (Department) is proposing to readopt, with amendments, its Worker and Community Right to Know Regulations (CRTK rules) at N.J.A.C. 7:1G. These rules are due to expire on June 16, 2004, in accordance with N.J.S.A. 52:14B-5.1.a. Pursuant to N.J.S.A. 52:14B-5.1c, this notice of proposal extends that expiration date to December 13, 2004.

The New Jersey Worker and Community Right to Know Act (WCRTK Act), N.J.S.A. 34:5A -1 et seq., effective on August 29, 1984, established a comprehensive program for the disclosure of information to the Department and the Department of Health about hazardous substances in the workplace and the community. It also required that the public have access to this information. In 1984, the Department adopted rules implementing the requirements of the WCRTK Act at N.J.A.C. 7:1G.

In January 2004, the Department published special temporary rules and a concurrent proposal pursuant to N.J.S.A. 13:1D-138 et seq., to classify employers subject to WCRTK Act requirements using the new Federal North American Industry Classification System (NAICS) instead of the Standard Industry Code (SIC) system. The Department amended the definition of “employer” at N.J.A.C.7:1G-1.2 to replace SIC codes with NAICS codes, directly or with exceptions and limitations, so that the universe of facilities covered by the rules continues unchanged. (See 36 N.J.R. 212(a); Jan. 5, 2004.) The Department anticipates adopting the concurrent proposal in the near future. The United States Environmental Protection Agency (USEPA) has also drafted a rule under SARA Title III to convert the SIC code-based system to one based on NAICS codes, which is expected to be adopted in November 2004.

The CRTK rules require employers having business activities with certain specified NAICS codes to annually report their inventories of environmental hazardous substances that meet or exceed established thresholds to the following entities: the Department; appropriate local police and fire departments; the Right-to-Know county lead agency (usually the county health department); and the Local Emergency Planning Committee (LEPC) for their municipality. Approximately 35,000 facilities are covered under the program and are required to use the Community Right to Know Survey to report, by March 1st of each year, their chemical inventories for the period covering January to December of the previous year.

The federal Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 et seq. (EPCRA), codified at Title III of the Federal Superfund Amendments and Reauthorization Act (SARA Title III), and the federal rules at 40 CFR 372 require certain

regulated employers to submit a toxic chemical release form (Form R or Form A) to the USEPA.

Pursuant to the WCRTK Act and the CRTK rules, any employer subject to SARA Title III section 313 is also subject to New Jersey's release reporting requirements. Regulated employers are employers at manufacturing or other facilities whose NAICS code is listed in the rule, that employ the equivalent of 10 or more full-time employees, and that have manufactured, processed, or imported more than 25,000 pounds of any of more than 600 toxic chemicals listed on the EPCRA Section 313 list, or otherwise used more than 10,000 pounds of any of these toxic chemicals, or used persistent, bioaccumulative, and toxic (PBT) chemicals, for which the thresholds range from 0.1 gram (dioxin) to 100 pounds. About 500 New Jersey employers are required to meet this annual State reporting requirement.

The Community Right to Know program has increased public awareness about the types and quantities of environmental hazardous substances used, stored, or manufactured in the community. The implementation of the CRTK rules has given local governments and emergency responders access to information concerning chemicals in the community, which enables pre-planning for emergencies and increased community safety. Detailed information for each hazardous substance includes inventory ranges, storage temperatures and pressures, storage locations, hazards associated with the use and/or storage of the substances, and container types. Also, a Department of Transportation (DOT) number, a key identifier used by emergency responders in understanding and anticipating hazards associated with these substances, is provided on the CRTK Survey for each substance.

The Department held an informal meeting on February 10, 2004, to discuss issues concerning CRTK program improvements. After considering stakeholder input, the Department is proposing to readopt the CRTK rules with the amendments described below.

Subchapter 1, General Provisions, sets forth the scope of the rules, defines terms used in the chapter, establishes burden of proof requirements when claiming exemptions to the rules, sets forth the certification language to accompany reports submitted under the rules, defines conditions under which the Department has the right of entry to inspect a business premises, contains a statement of severability for the provisions of the rules in the chapter, and provides for the NAICS codes in the definition of “employer” to be modified by notice of administrative change to reflect any modifications made to the codes at the Federal level while maintaining the equivalent universal regulated employers for purposes of these rules.

At N.J.A.C. 7:1G-1.2, Definitions, the Department is proposing to amend the definition of “Department” to reflect a change in the name of the referenced Department of Health to the Department of Health and Senior Services. The Department is also proposing to add a definition of “unstaffed site,” which is a new term introduced at N.J.A.C. 7:1G-3.2(g) in regard to a proposed exemption to CRTK reporting, as discussed below. Definitions of “input” and “output” are also proposed in regard to the proposed materials accounting rule at 7:1G-4.1(c)1.

Subchapter 2, Environmental hazardous substance (EHS) list, designates the list of EHSs subject to Community Right to Know reporting. The Department is proposing to readopt this subchapter without amendment.

Subchapter 3, Community Right to Know survey, contains the requirements for completing the Community Right to Know survey portion of the environmental survey, the thresholds for reporting, and reporting exemptions.

N.J.A.C. 7:1G-3.1(b) currently establishes the Community Right to Know Survey reporting threshold of either 500 pounds of EHSs, or the Federal SARA 302 threshold EHS planning quantity, whichever is lower. The Department proposes to maintain these thresholds, but to also require reporting of any quantity of those chemicals that the USEPA has identified as "chemicals of special concern" at 40 CFR 372.28. These chemicals are persistent, bioaccumulative and toxic (PBTs). The USEPA rule currently lists the following PBTs: aldrin, chlordane, dioxin and certain dioxin-like compounds, heptachlor, hexachlorobenzene, isodrin, lead, lead compounds, mercury, mercury compounds, methoxychlor, octachlorostyrene, pendimethalin, pentachlorobenzene, polychlorinated biphenyls, certain polycyclic aromatic compounds, tetrabromobisphenol A, toxaphene, trifluralin, and vanadium (except alloys) or vanadium compounds.

The Department is proposing the "zero" reporting threshold for PBTs because PBTs are toxic and also remain in the environment for long periods of time, are not readily destroyed, and build up or accumulate in body tissue. Relatively small quantities of PBTs can pose human and environmental health threats. PBTs are often contained in products that are produced and shipped from regulated facilities. Significant quantities of PBTs are used in manufacturing in New Jersey. In 2001, nearly 240 million pounds of PBTs were used by facilities that file Release and

Pollution Prevention Reports (RPPRs) in New Jersey. Of this quantity, approximately 79% were shipped in product, 14% was chemically consumed, and 6% was generated as nonproduct output.

Pursuant to N.J.A.C. 7:1G-2.1(a), listed EHSs, including PBTs, that are subject to reporting pursuant to SARA Title III section 313 are also subject to CRTK reporting. On October 29, 1999, USEPA issued a final rule, adding 40 CFR Part 372, that added new PBTs to the existing Section 313 list and established reporting thresholds for PBTs ranging from 0.1 gram to 100 pounds annual throughput. See 64 Fed. Reg. 58666. The summary that accompanied the EPA rule provides a complete description of human and environmental effects of the PBTs added to the Section 313 list at lower thresholds. On January 17, 2002, the USEPA added lead to the PBT list at 40 C.F.R. Part 372. See 66 Federal Register 4500.

The proposed amendment to N.J.A.C. 7:1G-3.1(b)2 lowers the PBT thresholds to any quantity greater than zero for CRTK reporting. The PBT thresholds established at 40 C.F.R. Part 372 represent annual throughput quantities, not daily inventories as required in CRTK reporting. A single daily inventory of these chemicals would almost certainly be significantly lower than would be reflected in annual throughput data. Therefore, due to the range of possible daily inventories that would occur at or below the USEPA's Section 313 thresholds for PBTs, and in consideration of the toxic and bioaccumulative properties of these substances, a conservative and realistic threshold quantity of zero is being proposed for chemical inventory reporting of PBTs.

N.J.A.C. 7:1G-3.1(c) requires that an employer provide all the information requested on the Community Right to Know Survey form for each EHS that meets or exceeds the thresholds

listed at N.J.A.C. 7:1G-3.1(b), discussed above. N.J.A.C. 7:1G-3.1(c)4 specifies how EHSs in mixtures shall be reported. The Department proposes amending this paragraph to clarify that the de minimis reporting exemption for mixtures of EHSs of 1% and 0.1% for carcinogenic EHSs provided in N.J.A.C. 7:1G-3.1(c)4i does not apply to PBTs. Reporting at the lower threshold is required for PBTs due to the long-term impact of these chemicals in the environment, regardless of how much is found in a mixture.

N.J.A.C. 7:1G-3.2, Reporting exemptions, lists the EHSs that are exempt from chemical inventory reporting on the Community Right to Know survey. The Department is proposing to add two exemptions from annual Community Right to Know reporting.

At new N.J.A.C. 7:1G-3.2(g), the Department is proposing to exempt employers from submitting annual CRTK Surveys for unstaffed sites, as defined in N.J.A.C. 7:1G-1.2 as amended. The Department is proposing to eliminate the need to register every piece of equipment (such as cellular telephone towers, cable boxes, switching boxes, and well stations) that has become part of a community's infrastructure. Due to the rise in use of cable television, cellular phones and other electronic telecommunications, this equipment has become very prevalent. A small portion of these sites would continue to be required to submit CRTK Surveys for substances present above the threshold quantities established under Section 312 of EPCRA. The Department is proposing this exemption because most of this equipment represents no risk or an extremely low risk to the community.

At new N.J.A.C. 7:1G-3.2(h), the Department is also proposing to exempt “non-users” and “users with inventories below thresholds” from annual reporting to reduce administrative costs and unnecessary reporting after a CRTK Survey is initially filed. Similar to the amendment above, this modification will allow the Department to avoid expending significant effort and resources with little or no environmental benefit. Facilities will be required to notify the Department of any changes to their status as a “non-user” or “user below threshold.”

Pursuant to these two new exemptions, the Department is proposing to delete reference to “non-user” in 7:1G-3.2(e), because this is now included at new 7:1G-3.2(h), and clarify that the exemption pertains to any facility having no EHSs.

The Department is also proposing a new 7:1G-3.2(i) to require an employer to notify the Department if there is any change in circumstances that gave rise to any of the exemptions in this section.

N.J.A.C. 7:1G-4, Release and Pollution Prevention Report, contains the requirements for submitting the Release and Pollution Prevention Report for environmental releases, materials accounting, and pollution prevention progress reporting.

N.J.A.C. 7:1G-4.1(c) lists the information that employers must provide on the RPPR. This information consists of data elements, otherwise known as “materials accounting” data, on hazardous substance inputs and outputs. The Department is proposing at new N.J.A.C. 7:1G-4.1(c)1 a requirement that input quantities shall not differ from output quantities in facility-level materials accounting data by more than five percent. Definitions of “input” and “output” have

been proposed in 7:1G-1.2. Typically, discrepancies of greater than five percent have been caused by “missing” materials that may be unpermitted, fugitive releases or undercounted wastes. The full accounting of a substance’s use and handling at a facility is often referred to as the life cycle of a substance. It has been found that some facilities are unable to account for all hazardous substances entering or leaving their facilities; thus, their materials accounting does not “balance.” The Department believes that submitting data that does not “balance” is inconsistent with the regulatory requirement to submit accurate data.

Subchapter 5, Submittal of the Community Right to Know Survey and Release and Pollution Prevention Report, details the due dates for submittal and the distribution protocol for each form. This subchapter also contains the requirements for the submittal of clarifying information regarding the survey and report.

At N.J.A.C. 7:1G-5.3 (currently reserved), the Department is proposing to require that, beginning with reporting year 2004, all facilities subject to the reporting requirements contained at N.J.A.C. 7:1G-4.1 must submit the RPPR electronically using the Department’s internet-based on-line reporting system. The Department also proposes a hardship exemption from this requirement for those facilities that do not have access to a computer or the ability to perform on-line reporting, upon verified written justification of such hardship. In the event of a malfunction in the State’s internet-based on-line reporting system, the Department would approve appropriate extensions as warranted. However, the Department would not approve any extension due to a malfunction in a facility’s electronic information technology system, unless the facility can verify the malfunction and promptly file the report by paper submittal.

The Department has determined that requiring electronic submittal of the RPPR will improve the data quality and efficiency of reporting under the CRTK program. On-line reporting provides real-time quality assurance/quality control (QA/QC) checks that decrease the need for the Department to contact employers concerning discrepancies and incompleteness and therefore increases the reliability of the data. Pre-population of information in the electronic reporting form after the first electronically submitted form lessens the data entry burden in subsequent years. Electronically submitted and stored records are more readily retrievable. Electronically submitted forms are automatically queued from Section A and B to C and D (or P2-115), and to the Pollution Prevention Plan Summary (in reporting years when the Plan Summary needs to be completed).

Subchapter 6, Trade Secrets, discusses procedures and guidelines for filing a trade secret claim; the information required by the Department for determination of a trade secret claim; methods for maintaining confidentiality and security of trade secret information; procedures for appeal of a determination of a trade secret claim; and procedures and guidelines for the disclosure of trade secret information. The proposed amendments in this subchapter correct the name of the offices and departments to which information is directed.

Subchapter 7, Issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessment, sets forth the procedures for the assessment of civil administrative penalties for non-compliance; procedures for requesting an adjudicatory hearing, the circumstances under

which a penalty may be compromised; and the penalties which may be assessed for non-compliance with the rules.

The Department is proposing to replace the existing penalty schedule at N.J.A.C. 7:1G-7.7 with a new rule that categorizes each violation as "minor" or "non-minor" for purposes of applying grace periods for compliance. The base penalties are continued from the existing rule, except as described below with respect to N.J.A.C. 7:1G-7.7(b)5 and 6.

The Fast Track Compliance Law, N. J.S.A.13:1D-125 et seq., more commonly known as the Grace Period Law, was enacted in 1995, to establish a process to ensure consistent application of grace (compliance) periods for minor violations of certain environmental statutes, including the WCRTK Act. Pursuant to the Grace Period Law, the Department is required to categorize all violations of these environmental statutes and their implementing regulations as “minor” or “non-minor” violations. Under the law, any person responsible for a minor violation is afforded a period of time to correct the violation before being subject to a penalty. If the minor violation is corrected within the grace period, then no penalty is assessed. The Grace Period law does not affect the Department’s enforcement authority, including the exercise of enforcement discretion, regarding non-minor violations.

The Grace Period law at N.J.S.A. 13:1D-129, requires the Department to categorize a violation as “minor” if:

(1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

- (2) The violation poses minimal risk to public health, safety and natural resources;
- (3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;
- (4) The activity or condition constituting the violation has existed for fewer than 12 months prior to the date of discovery by the Department;
- (5) In the case of a permit violation, the person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement of the same permit within the preceding 12 month period;
- (6) In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;
- (7) In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and
- (8) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time period prescribed by the Department.

The Grace Period Law also requires the Department to establish the length of the correction period, which may be no less than 30 days nor more than 90 days, based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to

achieve compliance. The Department may establish a special class of minor violations that for public health and safety reasons must be corrected within a period of less than 30 days.

Of the criteria established by the Grace Period Law, only criteria (2), (3), and (8), as listed above, may pertain to all violations of a particular regulatory requirement. Therefore, the Department determined that violations that pose minimal risk to public health, safety, and the environment; do not undermine or impair the goals of the program; and can be corrected within a time period of up to 30 days would be designated as minor.

The additional statutory criteria, (1), (4), (5), (6) and (7) as listed above, regarding respectively, the intent of the violator, the duration of the violation, and whether it is a repeat offense, are fact specific for each violation and must be considered on a case-by-case-basis.

Proposed N.J.A.C. 7:1G-7.7(a) states the purpose of this section in establishing penalties for violations of the Act and this Chapter, and whether they are minor or non-minor in accordance with the Grace Period Law.

Proposed N.J.A.C. 7:1G-7.7(b) and (c) set forth and amend the descriptions of violations and designate them as non-minor or minor violations. Violations currently codified at N.J.A.C. 7:1G-7.7(a)-(f) have been deleted and replaced with expanded and clarified versions. The new rules include explicitly the annual due dates for the Community Right to Know Survey and the Release and Pollution Prevention Report, and the specific agencies that must receive them. As discussed below, the Department also has identified at N.J.A.C. 7:1G-7.7(b) a new

violation concerning failure to provide the environmental release, throughput, waste transfer and pollution prevention information required by the RPPR and any pollution prevention information required pursuant to the Pollution Prevention Act.

The violation identified at N.J.A.C. 7:1G-7.7(b)1, concerning failure of an employer to complete and submit to the Department a Community Right to Know Survey for each facility covered by the rules by March 1 of the year following the reporting year, is non-minor because it undermines the program mandate to provide current information regarding hazardous substance use to the public. Failure to timely submit the survey poses more than a minimal risk to public health and safety because critical information would not be available to the Department or citizens for purposes of responding to requests regarding citizen concerns about health or safety. The information also would not be available to emergency responders in the event of the release of regulated substances or other catastrophic scenarios.

The violation identified at N.J.A.C. 7:1G-7.7(b)2, concerning failure of an employer to report all EHSs on the Community Right to Know Survey or Release and Pollution Prevention Report, is non-minor because failure to completely disclose reportable substances and information on substances poses more than a minimal risk to public health, safety and the environment. Critical information provided on the Survey might not be available to the Department to adequately respond to information requests from the community or in the event of the release of EHSs or other emergency scenarios. Critical information on the RPPR would not be available to address citizens concerns about releases, throughputs or the potential for pollution prevention at a facility.

The violation identified at N.J.A.C. 7:1G-7.7(b)3, concerning the failure of an employer subject to reporting under the Worker and Community Right to Know Act to submit a copy of the Community Right to Know Survey for each covered facility by March 1 of the year following the reporting year to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located, is non-minor because providing a copy of the Survey to these agencies in a timely manner is essential to the goals of the program. Local agencies must have the information at hand in order to adequately prepare for and react to emergency situations including fires, accidental releases and floods.

The violation identified at N.J.A.C. 7:1G-7.7(b)4, concerning failure of an employer to provide all information listed at N.J.A.C. 7:1G-3.1(c)1-5 on a Community Right to Know Survey form for each EHS that meets the reporting threshold is now being proposed. The requirement for a complete Survey had not previously been included in N.J.A.C. 7:1G-7.7. The Department has determined that an incomplete Survey is a violation, and that it is non-minor because all elements of the Survey are essential to the goals of the program. The violation poses more than a minimal risk to public health, safety and the environment because some critical information would not be available to the Department to adequately respond to information requests from the community or in the event of the release of EHSs or other catastrophic scenarios.

The Department deemed it necessary to separate into two violations the current violation at N.J.A.C. 7:1G-7.7(f) concerning failure of an employer to make available copies of

Community Right to Know Surveys and/or Release Pollution Prevention Reports. The current rule does not identify to whom they must be made available, although there are two entities to which they must be made available, each for different reasons. Therefore, two new violations are being proposed.

The new violation at N.J.A.C. 7:1G-7.7(b)5, concerning failure of an employer to retain a copy of the Community Right to Know Survey and/or Release Pollution Prevention Report at the facility and make it available upon request to facility employees within five business days of the request, is non-minor. As members of the community, facility employees have the right to have this information. This violation poses more than a minimal risk to public health, safety and the environment since informed employees are essential in assisting emergency responders in the event of the release of EHSs. Furthermore, employees generally are in closest proximity, and therefore exposure, to the EHSs and thus need to be able to obtain the Survey on an expedited basis.

The new violation identified at N.J.A.C. 7:1G-7.7(b)6 concerning failure of an employer to make available the Community Right to Know Survey and/or the Release & Pollution Prevention Report (RPPR) for the most recent Survey year to the Department, its local designees, or emergency responders at the time of an inspection or emergency is non-minor because providing a copy of the Survey and the RPPR at the time of an inspection to these agencies is essential to the goals of the program. The ability of an inspector to determine compliance with the WCRTK Act and the CRTK regulations is critical in ensuring the accuracy of information regarding the presence of hazardous substances.

The violation identified at N.J.A.C. 7:1G-7.7(b)7 concerning failure to provide the environmental release, throughput, waste transfer and pollution prevention information required by the RPPR and any pollution prevention information required pursuant to the Pollution Prevention Act is non-minor because elements of the RPPR and information pursuant to the Pollution Prevention Act are essential to the goals of the program. This violation poses a greater than minimal risk to public health, safety and the environment since the absence of any information requested by the RPPR prevents the Department from effectively carrying out its mission of promoting pollution prevention and providing reliable information concerning releases and throughputs of EHSs to the public.

The violation identified at N.J.A.C. 7:1G-7.7(b)8 concerning failure to submit to the Department information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report within 30 days of notification or subsequent date specified by the Department in accordance with N.J.S.A. 7:1G-5.2 is non-minor. This violation poses a greater than minimal risk to public health, safety and the environment, since the absence of accurate and complete information prevents the Department from effectively carrying out its mission of providing reliable information to the public concerning the presence of EHS's at facilities.

The violation identified at N.J.A.C. 7:1G-7.7(c)1, concerning failure of an employer to submit to the Department a Release and Pollution Prevention Report (RPPR) by July 1 of the year following the reporting year, is minor because current annual information regarding

hazardous substance use, releases and pollution prevention activities at regulated facilities, is intended primarily for planning purposes by the Department and for purposes of responding to requests from the public regarding health or environmental concerns. Failure to timely submit the RPPR Survey poses a minimal risk to public health and safety because it consists of annual throughput data rather than daily inventory data necessary for emergency responses as available in the Community Right to Know Survey. The grace period of 30 days is sufficient to submit the RPPR to the Department, before a violation may be assessed.

The violation identified at N.J.A.C. 7:1G-7.7(c)2 concerning failure of an employer to submit a copy of the completed Release and Pollution Prevention Report by July 1 of the year following the reporting year to the county lead agency of the county in which the facility is located is minor. Not providing annual throughput and release data to the county lead agency by the due date does not pose a risk to public, health, safety or the environment. The county lead agency is not the primary source of this information for the public, who normally requests this information through the Department. Providing RPPRs to this agency is primarily intended for longer-term information and planning. The grace period of 30 days is sufficient to provide the copy of the RPPR to the county lead agency.

Social Impact

The social impact of the rules proposed for readoption with amendments is anticipated to continue to be positive. The substance inventory and environmental release data collected pursuant to these rules provides the public with needed information to make informed decisions about the communities in which they live. The implementation of the Community Right to Know

rules enables emergency responders such as firefighters and police, local government agencies, and the public evaluate risks to community safety and public health and plan for emergency situations.

The amendments proposed to lower the thresholds for PBTs will provide more information to the public and to emergency responders on toxic chemicals that are persistent in the environment and accumulate in biological systems, and hazardous substances that may be shipped in products. Pollution prevention efforts throughout the State would be enhanced.

The amendments concerning data quality, that is, mandatory electronic reporting of RPPRs and the five-percent balance in materials accounting are expected to lead to greater public protection and data that are more reliable.

Improved compliance will be achieved due to the penalty amendments resulting in direct social benefit.

Economic Impact

The Community Right to Know rules proposed for readoption with amendments have been in place since 1984. The cost to employers for compliance includes the annual Right to Know fee established in the WCRTK Act and assessed by the Department of Labor. Currently, this fee is assessed at \$4.00 per employee with a \$75.00 minimum per facility. Other than the exemption for the presence of no hazardous substances at any facility operated by an employer, the fee amount is not related to the number of hazardous substances reported on the CRTK

Survey. Therefore, the establishment of a lower threshold for PBT substances that are already contained on the environmental hazardous substance list should have no impact of the Right to Know fees paid by an employer. The Department is not proposing any amendments that would expand the existing regulated universe of employers.

The Department anticipates that increased costs of chemical inventory reporting will not be significant to employers due to the introduction of reporting thresholds for PBTs of any quantity greater than zero and to the elimination of de minimis allowances for PBTs in mixtures. While testing of products for PBT content may already have been conducted by many manufacturers because of the inherent health risks of these substances and the requirement for manufacturers to communicate health related information on Material Safety Data Sheets (MSDSs) under the Hazard Communications Standard of the Occupational Health and Safety Administration (OSHA) at 29 CRR 1910.1200, there is no requirement contained in the proposed rule for additional testing. If an employer has any material present at their facility for which the associated MSDS does not indicate the presence of PBTs, and the employer is not reporting PBTs under TRI, it will be assumed for the purposes of Community Right to Know reporting that no PBTs are present. Furthermore, it is expected that the majority of employers affected by this change are currently submitting annual CRTK Surveys and may only have to report a small number of additional substances.

The cost of completion of the CRTK Survey increases with the number of reportable environmental hazardous substances stored, used or manufactured by the employer. Employers who chose to hire consultants to assist in the preparation of the Survey will find the cost of

compliance to be proportional to the number of substance entries on the Survey. It is estimated that additional reporting may take one to three hours. If a consultant were used, assuming a \$50 hour fee, the cost of this amendment would be \$150.

The proposed exemption from reporting for unstaffed sites and the elimination of annual reporting requirements for staffed sites not using any EHSs or using EHSs below thresholds is expected to have a positive economic impact. There are a significant number of employers currently filing annual Surveys for unstaffed sites, such as cell telephone towers, and the number of these facilities is expected to grow at a rapid rate. These employers would no longer have to report on these unstaffed sites. The elimination of the annual reporting requirements for non-users and users below threshold will have a positive economic impact on applicable regulated employers that will no longer be required to complete and submit annual CRTK Surveys after they submit an initial notification to the Department regarding their status.

Mandatory electronic reporting of RPPR data will have an initial cost associated with time required to learn how to complete electronic reporting, but should result in economic savings in future years since reporting will be easier as substance names, process information and related data will not have to be re-entered for future years' reporting, only updated as necessary. Electronic reporting should also decrease work needed to correct errors.

The requirement to achieve a 5% materials balance between inputs and outputs on the RPPR will only impact facilities that have not achieved this level of precision in their analysis

for the RPPR. For reporting year 2001, 250 chemical reports out of 2, 212 did not achieve a materials balance within 5%.

USEPA has estimated that the costs of preparing an initial Form R for a given chemical to be \$5, 079 with an associated time of 74 hours per chemical (66 Federal Register 4500). According to a 1993 study conducted by the Department, many companies use materials balance data to arrive at their TRI values. On Form R, facilities are required to indicate the methodology used to calculate their release data; on the 1990 TRI database 22% of all reporters used a materials balance approach to determine at least one release data element. The study further states that even for those facilities not collecting materials balance data, the collection of this data is not expected to be an excessive burden. The study found that based on the 14 facilities it surveyed, the average time needed to complete the RPPR was 7.5 hours per form. Responses ranged from two hours to two to three days. It is thus estimated that the preparation of the RPPR, using the maximum time required in the above study of 3 days (assumed to be 24 hours), would represent about 30 percent of the time needed to complete a Form R. This would represent a cost of approximately \$1,500.

It has been found that material accounting data is often available at a facility as part of good operating procedures (Pojasek, Robert B. and Lawrence J. Cali, "Measuring Pollution Prevention Progress," Pollution Prevention Review, 1991). Further, facilities are generally aware of the quantities of a chemical purchased, produced and incorporated into their products (White, Allen L., Monica Becker and Deborah E. Savage, Environmentally Smart Accounting: Using Total Cost Assessment to Advance Pollution Prevention," Pollution Prevention Review 3 (3):

247-260, 1993). Based on these studies, it is likely that information needed to achieve a 5% materials balance would be readily available at the facility. It should be also noted that in cases where a facility is unable to achieve a materials balance, the Department is willing to assist the facility in determining the most reasonable approach to achieve the 5% materials balance, including examining the data collected and using more appropriate emission factors.

The proposed grace period and penalty amendments will have an economic impact on the regulated community only to the extent a violator with a minor violation will have time to come into compliance before a penalty is assessed.

Environmental Impact

Disclosure of information concerning environmental hazardous substances in the community has a positive environmental impact. Reporting of environmental hazardous substances enables government agencies and emergency responders to plan for emergencies such as fires, accidents, and spills. Prompt response to incidents of this kind minimize the potential for adverse environmental impacts.

The reporting of CRTK substance information required by the WCRTK Act also allows the Department and the public to observe changes and trends in the use, storage, manufacture, and releases of environmental hazardous substances. Collection and distribution of this data has been an impetus for industry to reduce the quantities of hazardous substances used and released to the environment.

The rules proposed for readoption with amendments proposed in this rule would continue to provide significant potential environmental benefit. Lowering the thresholds for reporting of PBTs would provide information on additional quantities of chemicals that are persistent in the environment, accumulate in the human body and the food chain, and are toxic. In the event of unpermitted or unanticipated releases or accidents, the information thus available would have a direct positive impact on protecting the environment and the public. Enhanced pollution prevention efforts throughout the state would also result in less use and more efficiency in the use of hazardous substances.

The amendments concerning data quality, that is, mandatory electronic reporting of RPPRs and the five-percent balance in materials accounting reporting should lead to better pollution prevention efforts throughout the State.

Finally, the exemptions for unstaffed sites, non-users and users below thresholds would provide the Department more time to focus its resources on reviewing and ensuring data quality for facilities with more significant environmental impacts. It should be noted that any employer with an unstaffed site having hazardous substances in quantities greater than 10,000 pounds would still be required to submit a CRTK Survey for these substances pursuant to the federal Emergency Planning and Community Right to Know Act of 1986 (EPCRA). For “non-user” or “user below threshold” staffed sites, there is a requirement that the facility must notify the Department should their status change.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14d-1 et seq., require State agencies that adopt, readopt, or amend State regulations that exceed any federal standard or requirements to include in the rulemaking document a Federal Standards Analysis. The Community Right to Know rules at N.J.A.C. 7:1G contain several requirements that exceed Federal standards. The New Jersey Worker and Community Right to Know Act, passed in 1984, pre-dates the Federal Emergency Planning and Right to Know Act, which was passed in 1986. The Federal program was modeled after the State program. Both programs have two components: requirements for substance inventory reporting and requirements for environmental release reporting. The Federal substance inventory requirements at 40 CFR 370 and the environmental release reporting requirements of 40 CFR 372 parallel the substance inventory and release reporting components of the State program.

Although the goals of the State and Federal programs are similar, program implementation differs in three areas 1) the regulated universe 2) covered substances; and 3) applicability thresholds.

The State CRTK program covers employers engaged in certain business activities defined by the North American Industry Classification System (NAICS) codes. Each year the New Jersey Department of Labor, which has responsibility for assigning NAICS codes (formerly SIC codes), provides a list to the Department of employers having the covered codes. In accordance with the WRCTK Act, the Department sends every covered employer a Community Right to Know Survey booklet containing the Survey forms and instructions for completing and

submitting the CRTK Survey by March 1 of the year following the reporting calendar year. The CRTK Survey booklet contains the list of environmental hazardous substances that must be reported if listed threshold quantities are reached or exceeded. In most cases the threshold quantity is 500 pounds, although some substances must be reported at lower thresholds.

The Federal substance inventory reporting program at EPRCA Section 312 covers any facility owner or operator who has a threshold quantity of any hazardous substance that requires a Materials Safety Data Sheet (MSDS) pursuant to the Federal Occupational Safety and Health (OSH) Act. With a few exceptions, the threshold quantity for reporting is 10,000 pounds. Owners and operators having threshold quantities of hazardous substances are required to submit their substance inventories for the reporting year by the following March 1. In New Jersey this Federal information is collected on the CRTK Survey.

The Federal program for substance inventory reporting is broader in scope than the State program because it potentially covers more facility owners and operators and more substances; however, in actuality, there are fewer facilities reporting pursuant to the Federal program because of the high reporting thresholds. Although the State program is limited to employers engaged in specific business activities and substances designated as environmental hazardous substances pursuant to the WCRTK Act, the State program is stricter because reporting is required at a significantly lower threshold. As with many statutory requirements in New Jersey, there is a need to be more comprehensive at the State level because New Jersey is the most densely populated state in the country and has a large number of chemical manufacturing facilities. In addition, many employers who use hazardous substances are located in close

proximity to residences. As a result, the State legislature determined that the residents of New Jersey had a right to know which hazardous substances were being used and transported in their neighborhoods. Therefore, the CRTK rules, while more stringent than Federal requirements, are needed to ensure that the citizens of the State receive the information consistent with the statutory mandate.

The environmental release reporting requirements of the State and Federal programs are similar in the facilities they regulate. Both programs identify covered facilities by their industrial classification codes, but the State program covers only those employers whose classification codes are listed in the WCRTK Act. The toxic substances covered by both programs are identical. One significant difference between the two programs is the State requirement that materials accounting data are required in addition to the information required to be reported for the federal program.

New Jersey owners and operators who submit one or more Federal Toxic Chemical Release Inventory (TRI) reports (Form R) to USEPA are also subject to filing New Jersey Release and Pollution Prevention Reports (RPPRs) with the Department. With the exception of certain persistent, bioaccumulative and toxic (PBT) chemicals that have lower reporting thresholds, the threshold for Federal TRI reporting is 25,000 pounds of any toxic substance listed in 40 CFR372 that is manufactured or processed or 10,000 pounds of any listed toxic substance that is otherwise used. The threshold for State RPPR reporting is 10,000 pounds except for PBT's which are reported at the lower Federal thresholds. The reporting thresholds in the Federal and State programs differ because of the reporting requirements established by the New Jersey

Pollution Prevention Act and the regulations implementing that law. Both the State and Federal programs require the applicable forms to be submitted by July 1.

The proposed materials accounting provision in this regulation requires employers to balance to within five percent the quantity of toxic substances present at their facility as beginning inventory, brought on site, or produced on site (inputs) against the quantities of toxic substances consumed (chemically reacted), shipped offsite as (or in) product or nonproduct output, treated on or offsite, destroyed, or discharged to the air, water, or land, or remaining on site as ending inventory (outputs). The Federal rules at 40 CFR 372 contain no similar requirements for materials accounting. The Department believes materials accounting information provides the public with a clear picture of how a chemical is used at a facility and is also beneficial and necessary for determining the efficiency of manufacturing processes and enabling process owners and operators to evaluate alternatives for reducing environmental releases and use of toxic chemicals. Improved pollution prevention planning efforts have been found to be a positive effect on costs for a facility. A 1996 study by Hampshire Research Associates, Alexandria, VA, showed an average annual savings of \$66,000 for all facilities that were able to state whether money was saved through pollution prevention planning. It is thus believed that the benefits of this amendment to balance inputs and outputs to within five percent outweigh the costs, which are discussed in the economic analysis section above.

Jobs Impact

The rules proposed for readoption with amendments are not expected to have any impact on jobs in New Jersey. These rules have been in effect since 1984 and currently covered employers are familiar with the annual reporting requirements. In most cases, the substance inventories within a facility are similar from year to year and employers have already developed recordkeeping methods to track their substance inventories. Therefore, the Department anticipates no net loss or gain of jobs for employers currently in the program.

Employers with newly regulated substances may need to develop systems to track their inventories for changes in the types and quantities of environmental hazardous substances manufactured, used or stored on site. Most businesses already have such systems in place. Employers that do not have such systems in place may need to hire additional staff or contract with a consultant, resulting in a positive impact on jobs in New Jersey. Also, employers may opt to hire a consultant to inventory the substances onsite and then prepare and submit the annual Community Right to Know Survey.

These rules are not expected to affect jobs for companies required to complete and submit RPPRs. Most of the information necessary for completion of the RPPR can be obtained from the federal Form R reporting form.

Agricultural Industry Impact

The rules proposed for readoption with amendments do not affect the agricultural industry. None of the NAICS codes for agricultural industries is included among those for which either the CRTK Inventory Survey or the RPPR is required.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments apply to all employers having specific NAICS codes. It is estimated that currently 35,000 businesses are covered by the WCRTK Act. Of these the vast majority are considered “small businesses” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:1B-16 et seq. Potential costs to small businesses may include additional chemical inventory tracking, recordkeeping and need for consultant services.

Due to the exemption from annual reporting for employers for which no EHSs are present or for which EHSs are present in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C.7:1G-3.1(b), the majority of which the Department believes are small businesses, the amended rules will actually reduce the reporting burden.

In developing the proposed readoption of N.J.A.C. 7:1G with amendments, the Department balanced the need to protect public safety and the environment against the economic impact of the proposed amendments and has determined that to minimize the impact of the rules

on small businesses would endanger the environment and public safety. Therefore, no further exemption from coverage is provided.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The rules proposed for readoption with amendments do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1G.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1 GENERAL PROVISIONS

7:1G-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Department" means the New Jersey Department of Environmental Protection, however, for the purpose of N.J.A.C. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and the New Jersey Department of Health and Senior Services, unless otherwise indicated.

...

"Input" means the total of starting inventory, quantity produced on site, quantity brought on site, and quantity recycled out of process and reused on site.

...

"Output" means the total of quantity consumed, quantity shipped off site as (or in) product, ending inventory, quantity recycled out of process and reused on site, quantity destroyed through on site treatment, quantity destroyed through on-site energy recovery, air emissions, water discharges, quantity disposed of on site, and other off site transfers.

"Unstaffed site" means a remotely operated site, not contiguous to any other staffed sites and at which no full-time or part-time employees are assigned at any time except for maintenance or emergency repair. An unstaffed site includes but is not limited to a cellular telephone tower, telecommunications relay box, switching box, telephone pole, and well station.

...

SUBCHAPTER 3. COMMUNITY RIGHT TO KNOW SURVEY

7:1G-3.1 Completion of Community Right to Know Portion of the Environmental Survey

(a) (No change.)

(b) A threshold of 500 pounds [or the Federal SARA 302 threshold planning quantity, whichever is lower, shall apply to] applies for all EHSs present in aggregate at the facility at any one time[.], with the following exceptions:

1. The Federal SARA 302 threshold planning quantity applies, if such planning quantity is lower than 500 pounds;

2. The threshold for persistent, bioaccumulative and toxic (PBT) chemicals, identified by reference in the USEPA PBT rule, 64 Fed. Reg. 58666 (October 29, 1999), codified at 40 C.F.R. Part 372, and the USEPA lead rule, 66 Fed. Reg. 4500 (January 17, 2002), codified at 40 C.F.R. Part 372, shall be any amount greater than zero.

3.[These] The thresholds for reporting at (b)1 and 2 above do not apply to container labeling pursuant to N.J.A.C. 8:59-1 et seq.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the Department, which shall include, but is not limited to, the following:

1.-3. (No change.)

4. EHSs in mixtures shall be reported as follows:

i.-ii. (No change.)

iii. Any persistent, bioaccumulative and toxic (PBT) chemical listed by reference in the USEPA PBT rule, 64 Fed. Reg. 58666 (October 29, 1999), codified at 40 C.F.R. Part 372, and the USEPA lead rule, 66 Fed. Reg. 4500 (January 17, 2001), codified at 40 C.F.R. Part 372, shall be reported, regardless of the percentage of PBT in the mixture.

5. - 7. (No change)

(d) (No change.)

7:1G-3.2 Reporting exemptions

(a) - (d) (No change.)

(e) An employer having no EHSs at any facility is exempt from the annual Right to Know fee assessment [in accordance with N.J.S.A. 34:5A-26.1 provided non-user status is indicated on the annual Community Right to Know Survey transmitted to the Department].

(f) (No change.)

(g) An employer having an unstaffed site is exempt from submitting the Community Right to Know Survey for that site, unless the unstaffed site is a facility subject to Section 312 of EPCRA, and after initial notification to the Department indicating such status is made;

(h) An employer is exempt from submitting the Community Right to Know Survey for any facility at which no EHSs are present or at which EHSs are present in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C.7:1G-3.1(b), after initial notification to the Department indicating such status is made; and

(i) An employer shall notify the Department when there is any change in the circumstances that gave rise to the exemption claimed under this section.

SUBCHAPTER 4. RELEASE AND POLLUTION PREVENTION REPORT

7:1G-4.1 Completion of Release and Pollution Prevention Report

(a) -(b) (No change.)

(c) An employer shall provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey as defined at N.J.A.C. 7:1G-1.2 and any pollution prevention information required pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D-40(b)) on the Release and Pollution Prevention Report component of the Environmental Survey.

1. The difference between input and output quantities in throughput reporting on the Release and Pollution Prevention Report shall not exceed five percent.

(d) – (e) (No change.)

SUBCHAPTER 5. SUBMITTAL OF THE COMMUNITY RIGHT TO KNOW SURVEY AND THE RELEASE AND POLLUTION PREVENTION REPORT

7:1G-5.3 [(Reserved.)] Electronic reporting

(a) Beginning with reporting year 2004, any facility required to submit the Release and Pollution Prevention Report (RPPR) pursuant to this chapter shall submit its RPPR electronically using the Department's on-line reporting website located at www.nj.gov/dep/online/.

(b) If it is a hardship for an employer to submit an RPPR electronically, the employer may request approval from the Department to submit the RPPR in paper form. The Department shall approve such a request provided that:

1. The request is submitted no later than March 1 of the submittal year;

2. The employer explains:

i. The grounds for the hardship that electronic submittal would impose; and

ii. The effort(s) the employer will make to ensure the facility's ability to make electronic submittals in the future; and

3. The employer makes every effort to become able to submit the form electronically in future years.

(c) The Department shall approve, on a case-by-case basis, an extension of a reporting deadline if a facility is unable to electronically file its RPPR due to a malfunction in the Department's electronic reporting system. The Department shall not approve any extension due to a malfunction in a facility's electronic information technology system, unless the facility verifies the malfunction in writing and promptly files the report by other means.

SUBCHAPTER 6 TRADE SECRETS

7:1G- 6.1 Authority

(b) This subchapter is a jointly adopted rule of the Department of Environmental Protection and the Department of Health and Senior Services (see N.J.A.C. 8:59-3).

7:1G-6.3 Definitions

"Department" means, for the purposes of this subchapter, both the New Jersey Department of Health and Senior Services and the New Jersey Department of Environmental Protection, unless otherwise indicated.

7:1G-6.4 General provisions

(a) – (d) (No change)

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program

New Jersey Department of Health and Senior Services

CN 368

Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, [Bureau of Hazardous Substances Information] Office of Pollution Prevention and

Right to Know

New Jersey Department of Environmental Protection

CN 405

Trenton, NJ 08625-0405

7:1G-6.7 Confidentiality and security of trade secret information

(a) – (e) (No change)

(f) Except as provided in N.J.A.C. 8:59-3.15 (6.15), no person other than the Commissioner and his designated representatives and administrative law judges and their necessary staff conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over pre-hearing activities, conduct the hearing, render an initial decision, and return the record to either the Department of Environmental Protection or the Department of Health and Senior Services pursuant to N.J.A.C. 1:21.

7:1G-6.8 Decision-making agency on a trade secret claim

(a) – (b) (No change)

(c) Trade secret claims for labeling and reporting filed with both Departments shall be approved or denied jointly by the Department of Health and Senior Services and the Department of Environmental Protection.

SUBCHAPTER 7. ISSUANCE OF ADMINISTRATIVE ORDERS AND NOTICES OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

7:1G-7.7 Penalties

[(a) Failure to submit a Community Right to Know Survey pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(b) Failure to submit a Release and Pollution Prevention Report pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(c) Failure of an employer to report all EHSs pursuant to these regulations on the Community Right to Know Survey or Release and Pollution Prevention Report shall result in the assessment of a civil administrative penalty based on the number of substances omitted as follows: one to 10 substances, \$500.00; more than 10 substances, \$1,000.

(d) Failure to respond to the Department's request for clarifying information shall result in the assessment of a civil administrative penalty of \$1,000.

(e) Failure to submit a copy of a Community Right to Know Survey or a Release and Pollution Prevention Report to any required agency pursuant to N.J.A.C. 7:1G-5 shall result in the assessment of a civil administrative penalty in the amount of \$500.00.

(f) Failure of an employer to maintain or make available copies of the current Community Right to Know Survey or Release and Pollution Prevention Report at his or her facility pursuant to N.J.S.A. 34:5A-12 shall result in the assessment of a civil administrative penalty of \$500.00.]

(a) This section establishes penalties for violations of the Act and this chapter.

Violations are identified as minor or non-minor in accordance with N.J.S.A. 13:1D-125 et seq.

(b) The following violations are non-minor:

1. Failure of an employer to complete and submit to the Department a Community Right to Know Survey for each facility covered by this chapter by March 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

2. Failure of an employer to report all EHSs as required under N.J.A.C. 7:1G-3.1 on the Community Right to Know Survey or Release and Pollution Prevention Report in accordance with N.J.A.C. 7:1G-3.1, 4.1 and 5.1. The penalty for this violation is based on the number of substances omitted, and is \$500 if 10 or fewer substances are omitted and is \$1,000 if more than 10 substances are omitted.

3. Failure of an employer to transmit a copy of the Community Right to Know Survey for each covered facility by March 1 of the year following the reporting year to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$500 for each violation. The Department may

assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

4. Failure of an employer to provide on the Community Right to Know Survey all information listed at N.J.A.C. 7:1G-3.1(c)1-5 for each Environmental Hazardous Substance (EHS) that meets or exceeds the thresholds listed in N.J.A.C. 7:1G-3.1(b).. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

5. Failure of an employer to retain a copy of the Community Right to Know Survey and/or Release Pollution Prevention Report at each facility and make it available upon request to facility employees within five business days of the request in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

6. Failure of an employer to make available the Community Right to Know Survey and/or the Release and Pollution Prevention Report for the most recent Survey year to the Department, its local designees, or emergency responders in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

7. Failure to provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey in accordance with N.J.A.C.7:1G-4.1(c) and any pollution prevention information required pursuant to the Pollution Prevention Act on the RPPR in accordance with N.J.A.C. 7:1G-4.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, at in amount not to exceed \$1,000 per day.

8. Failure of an employer to submit to the Department information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report within 30 days of notification or subsequent date specified by the Department in accordance with N.J.S.A. 7:1G-5.2. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

(c) The following violations are minor:

1. Failure of an employer to submit to the Department a completed Release and Pollution Prevention Report by July 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-4.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

2. Failure of an employer to submit a copy of the completed Release and Pollution Prevention Report by July 1 of the year following the reporting year to the county lead agency of the county in which the facility is located in accordance with N.J.S.A. 7:1G-5.1. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor under (c) above, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency; and

3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for the same or a substantially same violation at the same facility within the preceding 12-month period.

(e) For any violation determined to be minor under (c) and (d) above, the following provisions apply:

1. The Department shall issue a notice of violation that:

i. Identifies the condition or activity that constitutes the minor violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects the violation and demonstrates to the Department that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, the Department may, in accordance with the provisions of this subchapter, impose a penalty that is retroactive to the date the notice of violation under (e)1 above was issued.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standard Analysis, addressing the requirements of Executive Order 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

Date: _____

Bradley M. Campbell,
Commissioner
Department of Environmental Protection